

Department of Agricultural Economics and Rural Sociology
The Ohio State University
In Association with The Ohio Cooperative Extension Service

A DIRECTORS RESPONSIBILITY

Presented

DEFIANCE COUNTY COOP DIRECTORS CLINIC

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by

Dr. Charles H. Ingraham

WHAT IS A COOPERATIVE?

A farmer cooperative is a business enterprise -- one organized, owned, and controlled by farmer members who have joined together voluntarily to provide themselves with needed supplies and/or services.

Cooperatives have long been a part of the American free enterprise system. They go back to Colonial days when neighbors helped each other clear land, build roads, and harvest crops. About 1810, farmers in Goshen, Conn., experimented with cooperative dairying and around 1900 there were 342 cooperative creameries in Ohio. Grain and livestock marketing cooperatives and farm supply purchasing associations soon followed.

There have, of course, been vast changes in the agricultural economy since those days and the focus of cooperatives has changed with the times.

Today's cooperatives perform a massive array of tasks for their members. They market about a fourth of U. S. farm products and help farmers obtain about a fifth of their supplies. And members add to their incomes and reduce their costs by use of this business tool. Other services cooperatives provide range from artificial breeding, soil testing, credit, irrigation, and insurance. Rural credit unions and rural telephone and electric cooperatives have helped farmers improve their living.

To accomplish these tasks, many small cooperatives have merged into larger local cooperatives to serve more members as community and trading areas have expanded. Many of these local cooperatives have joined together to form federated cooperatives.

Farmer cooperatives are chartered under State Laws and operate under the same federal and State business laws and regulations as other firms.

There are three basic principles that distinguish cooperatives from other types of corporate businesses:

1. Cooperatives provide goods and services to members at cost. Savings (or net margins) above costs are returned to patrons in proportion to their use of the cooperative.

2. Control of the cooperative is in the hands of its members. Traditionally, cooperatives operate on a one member - one vote basis. However, about 25 percent of the States permit cooperatives to allocate a limited number of votes according to the number of shares of stock a member holds or the extent of his patronage. In Ohio the laws say no member of a stock coop shall have more than 1/20 of the total votes. (1729.10-E-G)

3. Federal and State laws specify maximum interest rate of 8% that a cooperative may pay on stock. (1729.10 F) This is to keep ownership in the hands of its users rather than investors who are primarily interested in a profitable return on their investment.

Cooperatives are truly a part of our dynamic competitive economy.

A COOPERATIVE IS A BUSINESS

A cooperative is a business formed by a group of people to obtain certain services for themselves more effectively or more economically than they can obtain them individually. Cooperative members own, finance, and operate their business for their mutual benefit. Cooperative members draw up by-laws and other necessary legal papers. Members elect a board of directors. The board hires a manager and makes general policies. The manager runs the day-to-day business.

A COOPERATIVE DEFINED¹

"A cooperative is a voluntary contractual organization of persons

¹ Cooperative Criteria, Service Report 71, Farmer Cooperative Service, February, 1965

having a mutual ownership interest in providing themselves a needed service(s) on a nonprofit basis. It is usually organized as a legal entity to accomplish an economic objective through joint participation of its members. In a cooperative the investment and operational risks, benefits gained, or losses incurred are shared equitably by its members in proportion to their use of the cooperative's services. A cooperative is democratically controlled by its members on the basis of their status as a member-user and not as investors in the capital structure of the cooperatives."

A cooperative is not an easy solution to all economic problems. A cooperative is a business operation. It must be organized, financed, and operated just as any other business on Main Street. A coop cannot assure that a farmer, upon joining, will immediately solve his problems; nor can a coop guarantee to turn a marginal farming operation into a successful commercial farming operation. A cooperative cannot, in our competitive economy, continuously pay farmers the highest price for his produce or sell supplies at the lowest price.

When a cooperative is organized and goes into business it can increase competition and improve the service of the existing businesses dealing with farmers in the area served by the new cooperative. In our free competitive economy these new services and any price advantages are soon met by other businesses.

A member of a farmer cooperative must do business with his cooperative if he expects it to be successful. Far too often producers have used their marketing cooperative as a dumping ground for their low quality or excess products, and their supply cooperatives to provide service only. As a result, the cooperative has not been as successful as it could have been.

Even though it may continue to operate, it cannot achieve its potential if members do not use it as fully as possible.

AMERICAN FORMS OF BUSINESS

A Comparison

CHARACTERISTICS	TYPES OF BUSINESS ENTERPRISE			
	INDIVIDUAL	PARTNERSHIP	ORDINARY CORPORATION	COOPERATIVE CORPORATION
FUNCTIONS	To buy or produce goods for sale or to render service	Same as individual	Same as individual	To purchase supplies, market products or render needed services for members
OBJECTIVE	Profit for the individual owner	Profit for the partners	Profit for the investing stockholders	Profit for the members and patrons, by returning profits to users or owners
USERS	The public	The public	The public	Members and/or patrons
OWNERSHIP AND CONTROL	The individual	The partners	The investors	Members--usually one vote each
MANAGEMENT	The individual	The partners	Board of Directors	Board of Directors
LEGAL STATUS	Usually unincorporated	Legal agreement between associates under State law	Incorporated under State law	Incorporated under specific State law
LIABILITY	Assets of the individual	Assets of the partners	Assets of the corporation	Assets of the cooperative corporation
RETURN ON CAPITAL INVESTED	Unlimited	Unlimited	Unlimited	Limited by law 8%
WHO GETS NET PROCEEDS?	The individual	The partners	The stockholders	The patrons in proportion to use

UNITED STATES CAPPER VOLSTEAD ACT
An Act to Authorize Association of Producers of Agricultural Products

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged.

Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes; Provided, however, That such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:

First, That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or,

Second, That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

And in any case to the following:

Third, That the association shall not deal in the products of non-members to an amount greater in value than such as are handled by it for members.

Section 2. That if the Secretary of Agriculture shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade.

An association so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given on such a hearing shall be taken under such rules and regulations as the Secretary of Agriculture may prescribe, reduced to writing, and made a part of the record therein. If upon such hearing the Secretary of Agriculture shall be of the opinion that such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced thereby, he shall issue and cause to be served upon the association an order reciting the facts found by him, directing such association to cease and desist from monopolization or restraint of trade.

On the request of such association or if such association fails or neglects for thirty days to obey such order, the Secretary of Agriculture shall file in the district court in the judicial district in which such association has its principal place of business a certified copy of the order and of all the records in the proceeding, together with a petition asking that the order be enforced, and shall give notice to the Attorney General and to said association of such filing. Such district court shall thereupon have jurisdiction to enter a decree affirming, modifying, or setting aside said order, or enter such other decree as the court may deem equitable, and may make rules as to pleadings and proceedings to be had in considering such order. The place of trial may, for cause or by consent of parties, be changed as in other causes.

The facts found by the Secretary of Agriculture and recited or set forth in said order shall be prima facie evidence of such facts, but either party may adduce additional evidence. The Department of Justice shall have charge of court and while pending for review therein, the court may issue a temporary writ of injunction forbidding such association from violating such order of any part thereof. The court may, upon conclusion of its hearing, enforce its decree by a permanent injunction or other appropriate remedy. Service of such complaint and of all notices may be made upon such association by service upon an officer or agent thereof engaged in carrying on its business, or an any attorney authorized to appear in such proceeding for such association, and such service shall be binding upon such association, the officers, and members thereof.

Approved, February 18, 1922

Cooperative Marketing Act of the State of Ohio

Chapter 1729

Otherwise known as
Senate Bill 266, Session of 1923 Legislature
"Green-Farnsworth Law"

Charles H. Ingraham
Department of Agricultural Economics
and Rural Sociology
Cooperative Extension Service
Ohio State University

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Cooperatives

(Agricultural Associations)

1729.01 Terms used in section governing agricultural cooperatives.

In sections 1729.01 to 1729.27, inclusive, of the Revised Code

(A) "Agricultural products" includes horticultural, viticultural, forestry, dairy, livestock, poultry, bee and farm products

(B) "Association" means any corporation organized under sections 1729.01 to 1729.27, inclusive, of the Revised Code

(C) "Member" includes actual members of associations without capital stock and holders of common stock in associations organized with capital stock.

(D) "Person" includes individuals, firms, partnerships, corporations, and associations.

Associations shall be deemed non-profit, inasmuch as they are not organized to make profit for themselves as such, or for their members as such, but only for their members as producers.

1729.02 Purposes

An association may be organized to engage in any activity in connection with the marketing or selling of the agricultural products of its members, with the harvesting, preserving, drying, processing, canning, packing, grading, storing, handling, shipping, or utilization of such products, or with the manufacturing or marketing of the by-products of such products; to engage in any activity in connection with the manufacturing, selling, or supplying to its members of machinery, equipment or supplies of any kind; to engage in services in connection with activities authorized by sections 1729.01 to 1729.27, inclusive, of the Revised Code; or to engage in the financing of the activities enumerated in this section. Such association may be organized to engage in any one or more of such activities, but this section does not authorize any professional services otherwise prohibited by law

1729.03 Powers

Each association incorporated under sections 1729.01 to 1729.27, inclusive, of the Revised Code shall have the following powers:

(A) It may engage in any activity in connection with the marketing, selling, preserving, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling, or utilization on any agricultural products produced or delivered to it by its members or others, or with the manufacturing or marketing of the by-products of such products; any activities in connection with the purchase, sale, hiring, or use by its members or others, of supplies, machinery, or equipment of any kind; may engage in services in connection with any activities authorized by sections 1729.01 to 1729.27, inclusive, of the Revised Code, or may engage in the financing of such activities. Such association may engage in any one or more of the activities specified in this section but this section does not authorize any professional services otherwise prohibited by law.

Any such association may limit its activities to the handling or the marketing of products of its own members, except for storage. If it handles the products of non-members, the total of such non-members' products handled by it in any fiscal year must not exceed the total of similar products handled by the association for its own members during the same period.

(B) It may borrow money without limitation as to amount of corporate indebtedness or liability except in the case of associations organized with capital stock and may make advance payments and other advances to members or others.

(C) It may act as the agent or representative of any members in any of the activities mentioned in divisions (A) and (B) of this section.

(D) It may purchase, otherwise acquire, hold, own, exercise all rights of ownership in, sell, transfer, pledge, guarantee the payment of dividends or interest in, or guarantee the retirement or redemption of shares of capital stock or bonds of any corporation or association engaged in any activity directly related to the association's own authorized activities or in the warehousing, handling, or marketing of any of the products handled by the association.

(E) It may establish reserves and invest the funds thereof in bonds or in such other property as is provided in the by-laws.

(F) It may buy, hold, and exercise all privileges of ownership over such real or personal property as is necessary, convenient, or incidental to the conduct of any authorized business of the association.

(G) It may establish, secure, own, and develop patents, trademarks, and copyrights.

(H) It may do everything necessary, suitable, or proper for the accomplishment of any of the purposes enumerated in this section, or conducive to or expedient for the interest or benefit of the association, and may contract accordingly. In addition it may exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged, and also any other powers, rights, and privileges granted to ordinary corporations by the laws of this state, except such as are inconsistent with the express provisions of sections 1729.01 to 1729.27, inclusive, of the Revised Code; and it may do any such thing anywhere.

1729.04 Use of word "Cooperative"

No person, firm, corporation, or association organized or applying to do business in this state on or after July 17, 1923, as a farmers' marketing association for the sale of farm products shall use the word "cooperative" as a part of its corporate or other business name or title, unless it has complied with sections 1729.01 to 1729.27, inclusive, of the Revised Code.

1729.05 Number of incorporators

Five or more persons, a majority of whom are residents of this state and engaged in the production of agricultural products, may form a non-profit cooperative association with or without capital stock, under sections 1729.01 to 1729.27, inclusive, of the Revised Code.

1729.06 Articles of incorporation

Each association must prepare and file articles of incorporation which set forth:

(A) The name of the association;

(B) The purpose for which it is formed;

(C) The place where its principal business will be transacted

(D) The number of its directors, which must be not less than five; the terms of office for such directors; and the names and addresses of those who are to serve as directors, either for the first term or until the election and qualifications of their successors, or both.

(E) If the association is organized without capital stock, whether the property rights and interests of all members are to be equal or unequal; if unequal, the general rules applicable to all members by which the property rights and interests of each member are to be determined, and provision for the admission of new members entitled to share in the property of the association with the old members, in accordance with such general rules, which provision shall not be altered, amended, or repealed except by the written consent or vote of two-thirds of the members;

(F) If the association is organized with capital stock, the amount of such stock, the number of shares into which it is divided, and the par value per share; and if the capital stock is divided into preferred and common stock, a statement of the number of shares of stock to which preference is granted, the number of shares of stock to which no preference is granted, and the nature and definite extent of the preferences and privileges granted to each.

The articles must be subscribed by the incorporators and acknowledged by them before an officer authorized by law to take and certify acknowledgements of deeds and conveyances, and shall be filed in accordance with sections 1701.01 to 1702.58, inclusive, of the Revised Code. When so filed, said articles of incorporation, or certified copies thereof, shall be received in all the courts of this state as prima-facie evidence of the facts contained in them and of the due incorporation of such association.

1729.07 Amendment

The articles of incorporation of an association may be altered or amended at any regular meeting of the association or at any special meeting called for that purpose. An amendment must first be approved by two-thirds of the directors and must then be adopted by a vote representing a majority of all the members of the association. Amendments to the articles of incorporation, when so adopted, shall be filed in accordance with sections 1701.01 to 1702.58, inclusive, of the Revised Code.

1729.08 Filing fees

For filing articles of incorporation or amendments thereto, and with respect to the issuance of shares of stock, an association organized under sections 1729.01 to 1729.28, inclusive, of the Revised Code, shall pay to the secretary of state the fees imposed by section 111.16 of the Revised Code upon corporations organized for profit.

1729.09 Membership limited

(A) Under the terms prescribed in the by-laws adopted by it, an association may admit as members, or issue common stock to, only cooperative marketing associations or persons engaged in the production of agricultural products for the market, including the lessees and ten-

to its members the resale price after deducting all necessary selling, overhead, and other costs, such as interest or dividends on stock not exceeding eight per cent per annum, reserves for retaining stock and any other proper reserves, and any other deductions.

The by-laws or the marketing contract may fix as liquidated damages, specific reasonable sums to be paid by the members to the association upon the breach by them of the marketing contract in regard to the sale, delivery, or withholding of products, and may further provide that the member may pay all costs, premiums for bonds, expenses, and fees, in case any action is brought upon the contract by the association. Such provisions shall be enforceable in the courts of this state and such provisions for liquidated damages shall be enforceable as such and shall not be regarded as penalties.

(Amended Senate Bill No. 60)

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1729.181 and 1729.99 of the Revised Code be enacted to read as follows:

Sec. 1729.181 (A) No processor, handler, distributor, dealer, or agent thereof who purchases or contracts to purchase milk, fruits, vegetables, sweet corn, or other canning crops from producers of such raw agricultural products shall:

(1) Use duress against, coerce, or boycott producers of raw agricultural products in the exercise of their rights to join and belong to cooperative agricultural marketing associations;

(2) Discriminate against producers of raw agricultural products with respect to price, quantity, or quality, or other terms of purchase of raw agricultural products, solely by reason of the producer's membership in or marketing contract with cooperative agricultural marketing associations.

(B) For the purpose of enforcing section 1729.181 of the Revised Code, the director of agriculture may receive sworn complaints from affected producers of raw agricultural products or the cooperative agricultural marketing association of which such producers are members, or with whom they have a marketing contract, with respect to violations or threatened violations of such section. The director may make all necessary investigations, examinations, or inspections of any violation or threatened violation specified in the sworn complaint filed with him under this division.

(C) The director may, after receiving a sworn complaint and the holding of an informal hearing on the charges made in such complaint, bring an action to enjoin the violation of any of the provisions of section 1729.181 of the Revised Code as set forth in such complaint in the court of common pleas of the county in which such violation occurred. A summons in such action against any defendant shall be issued to the sheriff of any county within this state in which such defendant resides or may be served as in other civil actions. Actions against different defendants may be consolidated, in the discretion of the court, if the alleged violations are of the same provision, have occurred in the same or an adjoining county, relate to the same agricultural product, occurred in the same production season, and such consolidation can be made without prejudice to a substantial right of any defendant.

Nothing in this section shall be interpreted in any way to affect the rights of a producer of raw agricul-

tural products, who has not signed a contract with a cooperative agricultural marketing association, to bargain for his crop individually with any processor. A processor may, but shall not be required to bargain for any of the raw agricultural product requirements with any cooperative agricultural marketing association or associations. The liability of a processor or his refusal to meet the terms and conditions of any cooperative agricultural marketing association proposed contract shall not be interpreted as a boycott or discrimination against the cooperative agricultural marketing association or its members.

Sec 1729.99 Whoever violated section 1729.181 of the Revised Code shall be fined not less than fifty nor more than five hundred dollars for each offense.

1729.19 Cooperation Contracts

An association may, upon resolution of its board of directors enter into all necessary and proper contracts, and make all necessary and proper stipulations and arrangements, with any other cooperative corporation or association formed in this or any other state, for the cooperative or more economical carrying on of any of its business. Any two or more of such associations may, by agreement between them, unite in employing or separately employ the same personnel, methods, means, and agencies for carrying on their respective businesses. Such associations, acting singly or collectively, may meet in conference with two or more purchasers of their products who are acting collectively, and may at such conference fix by agreement the prices to be paid by such purchasers to the association or associations for such products. Such agreements are subject to section 1729.20 of the Revised Code. Such concerted action by such purchasers is not a contract in restraint of trade.

1729.20 Associations and Agreements not in restraint of trade

An association complying with sections 1729.01 to 1729.27, inclusive, of the Revised Code, is not a conspiracy, a combination in restraint of trade, an illegal monopoly, or an attempt to lessen competition or to fix prices arbitrarily; and the marketing contracts between such an association and its members, or any other agreements authorized in such sections, are not illegal as such in unlawful restraint of trade, or part of a conspiracy or combination to accomplish an improper or illegal purpose.

1729.21 Payment for purchase in preferred stock

If an association, organized with preferred capital stock, purchases the stock of, any property of, or any interest in any property of any person, it may discharge the obligations so incurred wholly or in part by exchanging, for the acquired interest, shares of its preferred capital stock to an amount which at par value would equal the fair market value of such acquired interest, as such fair market value is determined by the board of directors. The transfer to the association of the interest so purchased is equivalent to payment in cash for the shares of stock so issued.

1729.22 Membership in other corporations

An association may organize, form, operate, own control, have an interest in, own stock of, or be a member

and demand a special meeting for such business, at any time, and such meetings must thereupon be called by the board. Notice of every meeting, together with a statement of the purpose thereof shall be mailed to each member at least ten days prior to the meeting, unless the by-laws require that such notice may be given by publication in a newspaper of general circulation, published at the principal place of business of the association.

1729.13 Board of Directors

The affairs of an association shall be managed by a board of not less than five directors, elected by the members from their own number. The by-laws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts either directly or by district delegates elected by the members in each district. In such a case the by-laws shall specify the numbers of directors to be elected by each district and the manner of reapportioning the directors and of redistricting the territory covered by the association, and may provide that primary elections shall be held in each district to elect the directors apportioned to such districts and that the result of all such primary elections may be ratified by the next regular meeting of the association or may be considered final as to the association. The by-laws may provide that one or more directors may be appointed by any public official or commission or by other directors selected by the members or their delegates. Such directors shall represent primarily the interest of the general public in such associations, and need not be members of the association, but shall have the same powers and rights as other directors. Such directors shall not number more than one-fifth of the entire number of directors.

The association may provide a fair remuneration for the time actually spent by its officers and directors in its service, and for the services of the members of its executive committee. No director of the association, during the term of his office, shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association or others, or differing from terms generally current in that district.

The by-laws may provide that no director shall occupy any officer's position in the association except that of president and secretary or either, on regular salary or substantially full-time pay.

The by-laws may provide for an executive committee and may allot to such committee all the functions and powers of the board, subject to the general direction and control of the board.

When a vacancy on the board occurs other than by expiration of term, the remaining members of the board, by a majority vote, shall elect a director to fill the vacancy, unless the by-laws provide for an election of directors by district in which case the board shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy.

1729.14 Officers

The directors of an association shall elect from their number a president and one or more vice-presidents. They shall also elect a secretary and a treasurer, who need not be directors or members of the association; and they may combine the two offices and designate

the combined office as that of secretary-treasurer, or unite both functions and titles in one person. The treasurer may be a bank or any depository and as such, shall not be considered as an officer, but as a function of the board of directors, and the secretary shall perform the usual accounting duties of the treasurer, but the funds of the association shall be deposited only as and where authorized by the board.

1729.15 Bonds of officials

Every officer, employee, and agent handling funds, negotiable instruments or other property of or for an association shall execute and deliver adequate bonds for the faithful performance of his duties and obligations.

1729.16 Removal of officers or directors

Any member of an association may bring charges against an officer or director of the association by filing them in writing with the secretary of the association together with the petition, signed by five percent of members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association and by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges are brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses and the persons bringing the charges against him shall have the same opportunity.

In case the by-laws provide for the election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by twenty percent of the members residing in the district from which he was elected. The board of directors shall then call a special meeting of the members residing in that district to consider the removal of the director and at such meeting, by a vote of the majority of the members of that district, the director in question shall be removed from office.

1729.17 Actions of director reviewed by members

Upon demand of one-third of the entire board of directors of an association, made and recorded immediately at the same meeting at which the original motion was passed, any matter of policy that has been approved or passed upon by the board must be referred to the entire membership of the association for decision at the association's next special or regular meeting; and a special meeting may be called for this purpose.

(Marketing)

1729.18 Marketing Contracts

An association and its members may make marketing contracts, requiring the members to sell, for any period of time not over ten years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or to or through facilities to be created by the association. The contract may provide, among other things, that the association may sell or resell the products delivered to it by its members, with or without taking title thereto, and pay over

ants of land used for the production of such products and any lessors and landlords of such land who receive as rent any of the crop raised on the leased premises

(B) If a member of a nonstock association is not a natural person, such member may be represented by any individual, associate, officer, manager, or member, if such representation is authorized in writing.

(C) Any association organized under sections 1729.01 to 1729.27, inclusive, of the Revised Code, may become a member or stockholder of any other association organized under such sections.

1729.10 Membership, stock ownership, individual liability

(A) When a member of an association established without capital stock has paid his membership fee in full, he shall receive a certificate of membership from the association.

(B) No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment for stock. The association shall hold the stock as security for the payment of the note; but such retention as security shall not affect the member's right to vote.

(C) No member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or on his subscription to the capital stock, including any unpaid balance on any promissory notes given in payment of such membership fee or subscription.

(D) The directors of the association shall be liable only as members of the association.

(E) No stockholder of the association shall own more than one-twentieth of its common stock, and the association in its by-laws may limit the amount of common stock which one member may own to any amount less than one-twentieth.

(F) The association shall limit its dividends on stock to any amount not greater than eight percent per annum; and all its other net income, less specified reserves which shall be provided for in the by-laws, shall be distributed to its members only on the basis of patronage. Any receipts or dividends from subsidiary corporations, or from stock or other securities owned by the association, shall be included in the ordinary receipts of the association, and shall be distributed accordingly.

(G) No member in any such association organized without capital stock shall be entitled to more than one vote.

(H) Any such association organized with stock may issue preferred stock which does not have the right to vote. Such stock may be sold to any person and may be redeemable or retireable by the association on such terms as are provided for by the articles of incorporation and printed on the face of the certificate.

(I) The by-laws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products for the market; and such restrictions must be printed upon every certificate of stock subject to them.

(J) The association may, at any time specified in the by-laws, except when the debts of the association exceed fifty percent of its assets, purchase its own common stock at the book value of such stock, as determined by the board of directors, and pay for it in cash within one year thereafter.

1729.11 By-laws

Each association must, within thirty days after its incorporation, adopt for its government and management a code of by-laws not inconsistent with the powers granted by sections 1729.01 to 1729.27, inclusive, of the Revised Code. The vote or written assent of a majority of the members is necessary to adopt such by-laws. The by-laws shall provide that they may be amended and shall specify the voting power by which amendments may be made. It may also provide for any of the following matters:

(A) The time, place, and manner of calling and conducting the association's meetings;

(B) The number of members constituting a quorum;

(C) The right of members to vote by proxy or by mail, or both, and the conditions, manner, form, and effect of such votes;

(D) The number of directors constituting a quorum;

(E) The qualifications, compensation, duties, and terms of office of directors and officers, and the time of their election and the manner giving notice thereof;

(F) Penalties for violation of the by-laws;

(G) The amounts of entrance, organization, and membership fees, if any; the manner of collecting them; and the purposes for which they may be used;

(H) Any amount which each member is to be required to pay annually or from time to time to carry on the business of the association; any charge to be paid by each member for services rendered by the association to him, and the time of payment and the manner of collection of such charge; and any marketing contract between the association and its members which every member may be required to sign.

(I) The number and qualifications of members of the association and the conditions precedent to membership or to ownership of common stock therein; the time and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interests of members and of the shares of common stock; the conditions upon which and the time when the membership of any member shall cease; the suspension of the rights of a member when he ceases to be eligible to membership in the association; the manner and effect of the expulsion of a member; and the manner of determining the value of a member's interest, and provision for its purchase by the association, upon the death or withdrawal of a member or upon the expulsion of a member or the forfeiture of his membership, or, at the option of the association, provision for such purchase at a price fixed by appraisal by the board of directors; but in case of the withdrawal or expulsion of a member, the appraisal of his property interests in the association and the fixing of the amount thereof in money shall be done equitably by such board, and such amount shall be paid to him within one year after such expulsion or withdrawal;

(J) Any other provision for any matter relative to the control, regulation, operation, management, or government of the association.

1729.12 Meetings of members or stockholders

In its by-laws, each association shall provide for one or more regular meetings annually. The board of directors may call a special meeting at any time. Ten percent of the members or stockholders may file a petition stating the specific business to be brought before the association,

of any other corporations engaged in preserving, drying, processing, canning, packing, storing, handling, shipping, utilizing, manufacturing, marketing, or selling the agricultural products handled by the association or the by-products of such products.

If such other corporations are warehousing corporations, they may issue legal warehouse receipts to the association or to any other person against commodities delivered to them, and such legal warehouse receipts shall be considered an adequate collateral to the extent of the usual and current value of the commodity represented by them.

1729.23 Exemptions

Any law which is in conflict with sections 1729.01 to 1729.27, inclusive, of the Revised Code, shall be construed as not applying to the associations provided for in such sections.

Any exemptions under any law applying to agricultural products in the possession or under the control of the individual producer shall also apply to such products delivered by its farmer members, as long as such products are in the possession or under the control of the association.

1729.24 Annual Reports

Each association shall prepare and file with the director of agriculture, on forms to be furnished by him, an annual report containing the name of the association; its principal place of business; a general statement of its business operations during the fiscal year, showing the amount of capital stock paid up and the number of stockholders, if it is a stock association, or the number of members and amount of membership fees received, if it is a nonstock association; the total expenses of such operations; the amount of its indebtedness or liabilities; and its balance sheets for such fiscal year.

1729.25 Foreign Agricultural Cooperatives

Any corporation or association organized under laws of another state that are generally similar to sections 1729.01 to 1729.27, inclusive, of the Revised Code, may carry on any proper activities in this state upon compliance with the general regulations applicable to foreign corporations desiring to do business in this state. All contracts which could be made by any association incorporated under such sections, that are made by or with such foreign associations, shall be enforceable in this state with all of the remedies set forth in such sections.

1729.26 Associations organized and contracts made before July 17, 1923

Any association organized under statutes in existence before July 17, 1923, may, by a majority vote of its mem-

bers, be brought under sections 1729.01 to 1729.27, inclusive, of the Revised Code, through the limitation of its membership and the adoption of other restrictions as provided in such sections. Upon such vote it shall make out in duplicate a statement, signed and sworn to by its directors, to the effect that the association has, by a majority vote of the members, decided to accept the benefits of, and to be bound by, sections 1729.01 to 1729.27, inclusive, of the Revised Code, and has authorized all changes accordingly. Articles of incorporation shall be filed as required in section 1729.06 of the Revised Code, except that they shall be signed by those who are, at the time of filing, members of the board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation.

When any association can be incorporated under sections 1729.01 to 1729.27, inclusive, of the Revised Code, all contracts made by or on behalf of such association before July 17, 1923, by its promoters in anticipation of its becoming incorporated under the laws of this state, whether or not such contracts were made by or in the name of some corporation organized under the laws of another jurisdiction, are hereby validated as if made after July 17, 1923, if they could be entered into under sections 1729.01 to 1729.27, inclusive, of the Revised Code.

1729.27 General corporation laws apply

Sections 1701.01 to 1702.58, inclusive, of the Revised Code, and all powers and rights under such sections, apply to an association organized under sections 1729.01 to 1729.27, inclusive, of the Revised Code, except where sections 1701.01 to 1702.58, inclusive, of the Revised Code, are in conflict with sections 1729.01 to 1729.27, inclusive, of the Revised Code.

1729.28 Consumers' cooperatives

An association incorporated for the purpose of purchasing, in quantity, grain, goods, groceries, fruits, vegetables, provisions, or any other articles of merchandise, and distributing them to consumers at the actual cost of purchasing, holding, and distribution, may employ its capital in the purchase of such merchandise as it desires, and in the purchase or lease of such real and personal estate, subject always to the control of the stockholders, as is necessary or convenient for purposes connected with its business.

Such association may adopt such plan of distribution of its purchases among its stockholders and others as is most convenient and best adapted to secure its proposed ends. Profits arising from the business may be divided among the stockholders from time to time, as the association deems expedient, in proportion to the several amounts of their respective purchases.

SAMPLE CODE OF ETHICS
for a
Cooperative Board of Directors
(Each coop board should prepare their own)

The Board of Directors believe it to be expedient and proper to adopt a Code of Ethics to clarify any uncertainty which may now or in the future exist, regarding the authority exercised by the board, or individual board members and general rules applicable to board members' conduct of Alpha's business. The bounds of authority as proposed herein appear to us as a medium by which greater unanimity and closer coordination can be effected between board members, and among board members, management, and employees.

The Board recognizes its authority as being limited to establishment of policies deemed beneficial to Alpha Cooperative Assn; to employing a manager to have charge of the business of the Association under the direction of the board, and to effecting other duties as outlined by the bylaws.

The members of this board recognize that, except when the board is in formal meeting, his authority is equal only to the rights authority of any individual member of Alpha Cooperative Association.

The Board recognizes that the bylaws are their instruction from the membership for the boards actions. The board shall hire a manager. Under the direction of the Board of Directors, the manager or acting manager shall employ, supervise, and discharge all employees, agents, and laborers.

The Board agrees that while an individual board member may disagree with a policy or action adopted by majority vote of the board, he should support said policy or action as being the considered judgment of the board. The individual member shall have the right and duty to present further evidence and argument to the board, and the board shall have the duty of reconsidering upon proper evidence. (1729.17)

The Board agrees that an individual board member shall not discuss disputed board actions or policies with growers or others except for counsel and then with the utmost discretion and in a manner which will foster confidence in our Association.

POSITION DESCRIPTION--GENERAL MANAGER
(Sample Statement of a Cooperative)

A. Basic Functions

The General Manager is responsible for the effective management of all affairs of the Association. He plans, directs, and coordinates the programs and activities of the Association for balanced, comprehensive accomplishment to attain the objectives established by the Board of Directors.

B. Responsibility and Authority

Within the limits of the Articles of Incorporation, the bylaws, and the objectives and policies established or authorized by the Board of Directors, he is responsible for and has commensurate authority to accomplish the duties set forth below.

He may delegate portions of his responsibilities, consistent with sound operations and authorized policies and procedures, together with proportionate authority for their fulfillment, but he may not delegate nor relinquish any portion of his accountability for results.

He may, in order to carry out his functions properly, secure the services of outside agencies or consultants to examine, investigate or facilitate changes in operations, procedures, or methods.

He will:

1. Advise and assist the Board of Directors in consideration and determination of whatever objectives, policies, and other basic controls required for the most effective management of the Association.
2. Maintain a continuing study of economic, industrial, and technological developments and trends, and provides the Board with whatever forecasts and plans are necessary to assure that all phases of Association operations are adequately equipped to meet members' needs and take full advantage of the long range potentials of the business.
3. Define and recommend operating and financial objectives; develops in conjunction with department heads, short and long term plans and programs with supporting budget requests and financial estimates for each department, and the Association as a whole; submits proposals to the board of directors for approval.
4. Interpret and administer policies established by the board; issues standard practice instructions to members and department heads, and other personnel affected, to assure uniform interpretation.

5. Direct and generally supervise immediate subordinates in their performance of assigned duties and in the manner in which they pursue their objectives and programs; renders advice, assistance and guidance to subordinates.
6. Take action to correct unsatisfactory conditions that may arise in any phase of operation, and directs whatever action may be deemed necessary to accomplish approved objectives.
7. Keep the Board of Directors regularly and fully informed of the progress and results of Association operations for conformity with established objectives, programs, and budgets, and of all important internal and external factors influencing them.
8. Ensure that the organization structure at all levels of the Association are the most efficient for the type of operations in which the Association is engaged; plans for changes in the organization structure required to adjust to future trends of Association operations and secures the approval of the Board when major realignments are required.
9. See that the organization is staffed with competent people, that they are delegated authority, and are compensated commensurate with their responsibilities; that appropriate limitations of their authority are defined and understood with respect to policy and commitments on expenditures and actions affecting personnel.
10. Subject to Board approval, authorizes the appointment, promotion, retirement or release of management personnel at the department head level.
11. Direct the administration of the policies and programs for executive and managerial compensation.
12. Ensure that adequate provision is made by department heads for keeping abreast of the technological and marketing developments pertaining to the Association's field of operations.
13. Ensure that plant managers and their subordinates are familiar with and maintain the standards of grade, pack, and quality which have been adopted by the Association.
14. Ensure that all funds, physical assets, and other property of the Association are appropriately safeguarded and administered.

15. Keep all management personnel informed of matters concerning the progress and well-being of the Association and their employment with it.
16. Encourage participation and creative effort by maintaining a constructive attitude toward suggestions and by giving full credit to subordinates for their contributions.
17. Provide suitable opportunities for the development of and supervisory personnel, both to maintain existing competence and insure adequate bases for promotion.
18. Ensure that members are accorded equitable treatment in their transactions and relations with the Association.
19. Keep the members adequately informed of the affairs of the Association; encourage their participation, see that sound relationships are maintained between staff and the members, and that proper consideration is given to member complaints and suggestions.
20. Maintain appropriate contacts and develops necessary relations with government departments, industry organizations, labor unions, and other organizations which have an influence on the attainment of Association objectives.
21. Be active in his county coop council.

COOPERATIVE DIRECTOR TRAINING

All businesses are highly technical today and the hordes of competition have made it necessary for managers to sharpen their skills and know-how. However, the training of directors of agricultural cooperatives has not kept pace with that of hired management.

Few coop directors would put an employee on a tractor until he had been thoroughly trained and then only with close supervisions for a period of time to make sure he can operate it correctly. Too often, all that is necessary to qualify for the important position of directing the coop business is to get elected. Once elected, it is assumed that the person is now a knowledgeable coop director and qualified to guide the destinies of the cooperative and safeguard the investments of the coop's stockholders.

In other words, we are saying to ourselves and to the stockholders who elected the directors and whose capital they are charged with employing and controlling, that good directors are born; they are not made. This, of course, is not so.

The Farmers Cooperative Service has found in its work with cooperative leaders that most directors benefit from a planned training program, be it formal, or informal. With a little encouragement, most directors accept training willingly and they and the cooperative both benefit.

It's your responsibility as a coop director that all directors of your coop are trained to discharge their responsibilities with dispatch. There are several types of director training that might be employed.

Informal

Informal training usually starts long before the directors are elected to the Board. The informal training of cooperative directors should really begin at the time they become active members of the cooperative. This may well be many years before they are chosen to serve as directors. It is an inherent part of an on-going program of the member education program of successful cooperatives that touches every aspect of the cooperatives activities. It involves continuous participation in the life of the cooperative by the membership.

Formal

Director training should start with a careful selecting of nominees for the position on the Board. This, of course, raises the question of what should be the basic requirements for directors.

Some cooperatives often schedule training programs for directors after their election. These may be conducted by members of the Board of Directors, by Extension Specialists or by other outside consultants. It is questionable whether formal training programs for newly elected coop directors

should be conducted by the hired manager of the cooperative they are destined to direct. Director training is particularly desirable for those cooperatives that limit the number of terms or years a director may serve. However, it also can be used to great advantage by all cooperatives irrespective of their policies as to the term directors serve.

State and National associations with whom the cooperative is affiliated may provide director training programs. Some cooperatives engage a management consultant firm to annually conduct director training programs. Other cooperatives may work closely with the Farmer Cooperative Service or national cooperative educational organizations who provide for their directors, adequate training to prepare them for their task of directing.

Who is responsible for the training?

The Board itself has the major responsibility for planning the director training program. The President or Chairman of the Board may be in charge or the program may be developed by a committee of directors.

Managers role

Good Board-Manager relations are necessary for the success of any cooperative. The manager of the cooperative does have a vital interest in the training and development program for directors. The manager is frequently expected to provide much of the information used in the training program. However, he ordinarily takes a more active part in informal, or on-the-job training than he does in formal training programs.

Management's most important function in director development is as an operations advisor to the Board. In this way, he can explain the day-to-day operations of the cooperative to the directors.

The manager should be able to give the directors a clear picture of the present status of the operation, how well it functions and how strong the business really is.

He should be able to give them sound ideas on the potential of the cooperative. He can make major contributions to planning for the future.

The manager must:

1. Motivate directors to attend and participate in important meetings.
2. Motivate directors to become fully informed about their responsibilities.
3. Motivate directors to accept Board assignments.
4. Challenge directors to broaden their viewpoints and accept the responsibility.
5. Assist directors in establishing organizational objectives and goals.
6. Involve directors in the decision making for the cooperative.

Thirty years ago, there were fairly wide margins both in farm supplies and in the marketing of many farm products. Farmer cooperatives are

responsible to a large degree for reducing these margins. As a result of the cooperative movement, the weak business organizations that required long margins have been eliminated. The remaining competition to farmer cooperatives can provide goods and services that are economically, or possibly even more economical than cooperatives, and if so, may put a further squeeze on the margins.

In our dynamic competitive economy, the emergence of new competing forces in the market place, increasing size of cooperative enterprises, and the intensity of competition, all direct our attention to the need for careful thought about how work and people should be put together in order to provide an efficient, profitable cooperative organization, able to meet the demands of current operation, yet creative enough to anticipate and master the future demands and economics.

Cooperatives and Society

In Ohio, society has granted to farmers, the right to organize to market their products and buy their supplies under the Cooperative Marketing Act of the State of Ohio. This Act permits producers of agricultural products to work together in improving their marketing situation without their organizing being in violation of anti-trust laws in the Valentine Act. (This does not mean or imply that cooperatives are exempt from antitrust.) This Ohio enabling legislation said in part, "that persons engaged in agricultural products such as farmers, may act together in associations incorporated or otherwise with or without capital stock, in collectively processing, preparing for market and handling, and marketing in interstate and foreign commerce, such products or persons so engaged."

As a safeguard, this enabling legislation has built in a requirement such as found in the Capper Volstead Act. First, that no member of the association be allowed more than one vote regardless of the amount of stock or membership capital he may own, or, second, that the association does not pay dividends on stock or membership capital in excess of 8% per annum. The association shall not deal in the products of non-members to an amount greater in value than such are handled by it for its members.

Capable Directors

As farmer cooperatives continue to grow and become an even greater influence in our economy, the demand will become greater for capable, far-sighted and active board members to do the analyzing and planning required for the successful management of cooperatives. Directors of successful farmer cooperatives of the future must devote the necessary time away from their farm to effectively carry out their responsibility of director of their cooperative.

Cooperatives Legal Framework

An incorporated cooperative operates within a legal framework made up of articles of incorporation, bylaws, and (in some instances) a marketing agreement. These documents must be drawn up with care to insure that they provide for the kind of operation the incorporators want and that they meet legal requirements.

A corporation has certain legal attributes which are not attached to an unincorporated association, chief of which are the authorities to sue and be sued, take hold and convey property, make contracts, and enter into other legal transactions, in the name of the corporation and to do these things without regard to changes in its membership, and therefore to continue its corporate existence indefinitely even though all of its original members, or its substituted members from time to time die or become legally incapacitated. The charters of all corporations incorporated under the General Corporation Law are unlimited in duration unless the articles otherwise provide."^{1/}

"The corporate form of organization carries with it certain definite advantages over partnerships and other forms of unincorporated associations. Chief of which are the convenience of being able to conduct all forms of business transactions, and own and hold property, in a single corporate name, unaffected by death, legal incapacity or other disability of any or all of the members or shareholders for the time being, and the exemption of the shareholders or members from liability for the debts or other obligations of the corporation."

"The life of the corporation is unaffected by the death or cessation of existence of its stockholders or members."^{2/}

Articles of Incorporation

Articles of incorporation are a statement of the kind and scope of business the cooperative is designed to do. This statement must be drawn up to conform with State laws. It is wise to specify rather broad incorporating authority even though at the beginning services may be quite limited.

The law outlines the general powers, privileges, requirements and organizational structure for cooperatives incorporated under it. The articles of incorporation are written to fit a particular cooperative and are more specific than the law. The articles of incorporation must not be in conflict with any provisions of the law.

In case of legal question, the articles of incorporation take precedence over the Bylaws, and the law under which the cooperative is incorporated takes precedence over the articles of incorporation. The services of a competent attorney experienced in cooperatives should be retained to aid in drawing up the articles of incorporation.

Chapter 1729.06 of the Cooperative Marketing Act of Ohio discusses the articles of incorporation.

Chapter 1729.07 of the Ohio Corporations Law describes how articles of incorporation may be amended. It states: "The articles of incorpora-

^{1/} Anderson's Ohio Corporation Desk Book, Section II.
^{2/} Ibid.

tion of an association may be altered or amended at any regular meeting of the association or at any special meeting called for that purpose. An amendment must first be approved by two thirds of the directors and must then be adopted by a vote representing a majority of all the members of the association. Amendments to the articles of incorporation, when so adopted, shall be filed in accordance with sections 1701.01 to 1702.43, inclusive of the Revised Code."

By-laws

The purpose of Bylaws is to provide rules for the regulation of the affairs of the corporation. Bylaws perform the same function for a cooperative that a blueprint performs for a builder. They are a working plan for the corporation. A Bylaw must be general in its application and not aim at a particular member.

The power to adopt Bylaws resides in the stockholders or members and they alone have the power to adopt them. However, even where the Bylaws are adopted by unanimous consent of all stockholders they have been held void if they are in conflict with the laws of the State.

The members of a corporation and its directors and officers usually are conclusively presumed to have notice of Bylaws, and of what they contain and hence are bound by them, although, as a fact they may be ignorant of them. It is advisable to ~~make~~ available to each member of the corporation a copy of the Bylaws.

Legal liabilities may result from a failure of officers and directors to observe Bylaws. The directors as well as the managers, are in law simply agents, and agents are bound by the instructions of their principles. Bylaws are adopted by the members of an association, and they constitute instructions, rules or restrictions for the management of an association.

Chapter 1729.11 of the Ohio Corporation Law sets forth the Bylaw Requirements for Agricultural Cooperatives.

The Director's Authority

A Board of Directors is a governing body legally created by the laws of the state and the corporate papers of the organization and by these legal documents it is given the authority to exercise the power of the corporation, limited only by any conditions set forth in the corporations bylaws.

The ultimate authority of management of a corporate business, cooperative or general, rests with the owners or stockholders. The owners or stockholders select and elect members of the Board of Directors. From the viewpoint of the law, the Board of Directors is the real head of a corporation, and occupies a position between the stockholders and hired management. The Board of Directors is not only charged with the responsibility for exercising all the authority of the corporation, its management, the safeguarding of its assets and the conduct of its business - the Board of Directors is in fact, the only group of persons in whom this authority is vested. The Board of Directors - acting as a group - is the only body of persons who can lawfully conduct and manage the corporation. (1729.13)

In fact, it is the abilities of the men who make up the Board of Directors that is the real decisive factor in the growth and accomplishments of any organization.

Board Functions As A Group

It must always be remembered that the Board of Directors decisions are group decisions. The Board is a group; it acts jointly as a Board, never as an individual. Opinions and actions result from the contributions from all the persons making up the Board. Therefore, the selection of persons to serve on the Board of Directors is an important consideration for the owners of the corporation. The action of any Board of Directors is conditioned by the background, experience, knowledge and the attitude of its collective membership. The awareness on the part of the owners of the corporation, of the obligation or trust which the Board of Directors has is probably of foremost importance. Ideally, a Board members position is one of trusteeship in watching over the assets of the corporation for the benefit of its stockholders. It is necessary that each director have knowledge of the corporations business, its opportunities and limitations and of conditions affecting its operations.

Many corporations select directors who possess certain managerial skills, such as finance, law, judgement, etc. The Cooperative Marketing Act of Ohio requires that the directors of cooperatives organized under this Act be farmer members of the cooperative but does however, provide for some directors at large. (1729.13)

Board Vacancies

Vacancies will occur by resignation, death or otherwise. It is advisable that all vacancies be filled promptly, so that there may be at least five directors in office. The law gives the Board of Directors the responsibility that when a vacancy on the Board occurs other than by expiration of term, the remaining members of the Board, by a majority vote, shall elect a director to fill the vacancy, if the Bylaws provide for an election of directors by districts in which case the board shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy. (1729.13)

Director Qualifications

The Cooperative Marketing Act of the state of Ohio requires that the directors be "elected by the members from their own number." Additional qualifications for Board of Directors may be set forth in the Articles or Bylaws of the cooperative, so either of these documents may require a director to possess certain professional, business, educational, age residence, or other reasonable qualifications. (1729.13)

Whether or not a minor may be a director has not definitely been settled in the State of Ohio, but in view of the fact that the laws of some other states disqualify a minor and there is no such provision in the Ohio law, it may be assumed that a director should be 21 years of age.

Non-member Directors

The Articles of Incorporation or the Bylaws of an Agricultural Cooperative Marketing Association may provide that one or more directors may be appointed by any public official or commission or by other directors selected by the members or their delegates. Such directors shall represent primarily the interest of the general public in such associations, and need not be members of the association, but shall have the same powers and rights as other directors. Such directors shall not number more than one-fifth of the entire number of directors.

Remuneration

The cooperative association may provide a fair remuneration for the time actually spent by its officers and directors in its service, and for the services of the members of the executive committee. (1729.13)

No director of a cooperative, during the term of his office, shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association or others, or differing from the terms generally current in that district.

The bylaws of the cooperative may provide that no director shall occupy any official position in that association except that of President or Secretary, or either, on regular salary of substantially full time pay.

Executive Committee

The bylaws of the cooperative may under the statute provide for an executive committee and may allot to such committee all the functions and powers of the Board, subject to the general direction and control of the Board; however, the acts of such executive committee, if within the scope of the powers delegated it by the entire Board of Directors, shall be as effective for all purposes as if the acts had been taken by the entire Board. The Board of Directors regardless of the powers it may give to the executive committee cannot escape liability for non-performance of duty which rests upon the Board as a whole. (1729.13)

Directors Meetings

The cooperative statute does not provide specific times or periods for meetings of the Board of Directors. The Articles of Incorporation or the bylaws may provide for the time and place of meetings of the Board of Directors.

Meetings of the Board of Directors should be held as frequently as proper attention to the associations business requires. If the associations bylaws do not provide for regular meetings of the Board of Directors, provisions are often made for such regular meetings by resolution of the Board of Directors.

The Articles or By-laws may provide that meetings of the directors shall be held, without notice, at fixed time and place. If no time is fixed for regular meetings in any manner above mentioned, the meetings of the Board of Directors will of necessity be special meetings.

If there are no provisions in the Articles or By-laws for time or place of holding directors meetings or for giving notice of such meetings, it is assumed that the requirements of the general corporation law would apply which require written notice at least two days before each meeting of the Board. The notice should state the time and place of the Board Meeting but need not specify the purpose unless so required by the Articles of Incorporation or By-laws. Notice of such meetings may be waived, either by personal presence and participation without objection as to the lack or insufficiency of notice of the meetings or written ascent filed with or entered upon the records of the meetings either before or after the holding thereof.

In the resolution of the Board, board meetings may be held at any reasonable time or place within or without the state.

It is customary that meetings of the Board of Directors be held on business days within reasonable business hours, although it is recognized that many agricultural cooperatives find it advisable to hold their board meetings in the evening at a time outside of ordinary business hours. The Ohio Supreme Court has said that "Whatever Acts may be lawfully done on other days are also lawful when performed on Sunday or holidays, except when and insofar as their performance on those days is prohibited by statute."

Directors Quorum

The Articles of Incorporation or By-laws may provide for the number of directors necessary to constitute a quorum at a meeting of the Board of Directors. Unless a quorum is provided for in the Articles of Incorporation or By-laws, a majority of the whole authorized number of directors is necessary to constitute a quorum, except that it is recognized that a majority of the directors in office constitute a quorum for filling a vacancy on the Board of Directors.

A majority of those directors attending a meeting of the Board of Directors at which a quorum is declared to be present may act for the Board of Directors unless the Articles of Incorporation or By-laws require that action be taken by a greater number of the Board members.

Therefore, if a majority of qualified directors or the specific number, if any, specified in the corporate papers do not attend a duly called board meeting, any business transacted by the minority at such meetings is at least voidable.

Directors cannot vote by proxy

If a qualified quorum is present at a properly convened board meeting, the majority of these persons may exercise any and all powers vested in the Board of Directors. There ceases to be a quorum when a quorum withdraws from the meeting. It has been held by the courts that the failure

of a director to vote upon a proposition before the board, if his vote is necessary in order to constitute a quorum, results in no quorum with respect to that matter. If the law or corporate papers require for example, "a two-thirds vote of the members present," the failure of members present to vote, defeats the action if two-thirds of those present do not vote

Action of directors without a meeting

Since October 11, 1955, the general corporation law of Ohio (1701.54) has permitted directors of general corporations to act without a meeting, unless the Articles or by-laws prevent such action, if each director signs a written statement setting forth the action taken, which is then filed with or made a part of the records of the corporation. It is assumed that section, 1729.27 provides for this action.

Unless the above requirements for action outside the Board meeting can be met - the Board must act as a board either in a regular session or in a special session. A director merely by virtue of his office, has no authority to act for or bind an association except in regular or special meetings of the Board of Directors.

Even a majority of the Board acting as individual directors or in a "board meeting" illegal for any reason, cannot take action binding the association. Action by directors at an illegal board meeting may be adopted and ratified at a later legal meeting of the Board of Directors.

Attendance at Board Meetings

The directors of a cooperative are not bound to attend a certain number of meetings, yet their absence from meetings can in some cases, make them personally liable by the fact that they failed to attend meetings and to devote the necessary attention and consideration to the affairs of the corporation. It is not possible to define how much time and effort a director must devote to the affairs of the cooperative, since different cooperatives will require different amounts of time. In our competitive economy it becomes increasingly important that directors of agricultural cooperatives be willing to devote the necessary time away from their farming operation to adequately direct and manage the affairs of the cooperative association.

Bonding

Every officer, employee and agent handling funds, negotiable instruments or other property of or for the association, shall execute and deliver adequate bonds for the faithful performance of his duties and obligations. (1729.15)

Record of Meetings

Courts, in the absence of fraud impeaching the minutes, regard the records or minutes at least as prima facie evidence of the action taken by the Board of Directors.

It is sufficient if the minutes of the board meetings show the date and hour of the meeting and the matters considered, state the substance of the motion or set forth the resolution verbatim and then state that it was considered and either that a vote was taken and the results of the vote or that certain action was taken by unanimous agreement. There is no statutory requirement that a role call for action be taken by the Board of Directors.

The minutes of the association are the official records of that association and are so recognized by courts. It is unnecessary to record in detail all discussions and general conversations occurring at the board meeting or to set out in detail reports made to the Board. If reports made to the Board are written, they may, if so desired, be made a part of the minutes by appropriate reference and be maintained in the secretary's file. In the case of oral reports, they may be summarized or reported in length as the Board of Directors may direct. The Board of Directors, of course, if it deems advisable, may order that any matter be included in the minutes of their meeting; however, in the absence of such instruction, it is customary that only ordinary matters which result in action by the Board be recorded in the minutes.

The minutes should be signed by the secretary of the meeting; this person need not be the secretary of the corporation, but must be the person serving as secretary. Minutes of board meetings are received in the courts as prima facie evidence of the facts as stated as well as of the fact that the Board meeting was duly called and duly held and that all the motions and resolutions adopted at the meeting were duly adopted and that elections held at the meeting were valid, when an original or copy of the minutes of the board meeting signed by the secretary is presented. Banks frequently require a copy of the minutes of the Board of Directors legal meeting covering the boards action authorizing the officers to obtain a loan.

Director's Duties

It is quite difficult to define all the duties of the Board of Directors. In general, it can be said that members of the Board of Directors are individually and collectively under a continuing obligation to exercise their best judgment and apply such knowledge and experience as they have in the conduct and management of the cooperative's business. They must use good faith and exercise the care which is commonly exercised by an ordinarily careful and prudent man under similar conditions. They must have in mind that they are trustees charged with the responsibility of dealing with the rights and properties of others. Many say that the biggest challenge to a member of a Board of Directors is that they have the responsibility of making decisions that are not based on their own individual interests but on the total combined interests of all the members or stockholders of the association. As trustees, for the shareholders and members of their association, they must not take advantage of their position as director to gain profit or benefit for themselves at the expense of the corporation. They may receive remuneration for the time they actually spend as officers or directors in service to the cooperative and for their services as members of the executive committee.

As individuals, the members of the Board of Directors have no authority to act for, or bind the corporation, unless they are duly elected or appointed to do so in a legal meeting of the cooperative Board of Directors.

The director of a cooperative association must use care in directing its affairs to keep within the powers conferred upon them by the corporations charter, by-laws, marketing contracts, if any, and laws of the state of Ohio. If directors exceed their authority, neglect their responsibilities or act in violation to the provisions of the statute, their charter, by-laws or marketing contracts of their association, legal liability results.

Although the director of a cooperative association occupies positions of trust, responsibility and liability, they are not insurers of the success of the association.

As a director you should exercise the same degree of care in directing and supervising the affairs of the association that prudent and diligent men would exercise under similar circumstances. A director who fails to exercise this degree of care or to be honest and diligent in attending to the affairs of the association may render himself liable to the association, to its receivers (if in the hands of a receiver) or to its members.

The cases are few in which a director has been held liable as a result of a general collapse of a corporation if fraud or specific losses traceable to specific transactions are not involved. However, a director who fails to attend properly to the duties of his office is always confronted by the fact that, generally, he will be held liable for losses resulting from fraud on the part of officers, agents, or other directors of the association; for specific losses such as one caused by the unlawful expenditure or employment of association funds, if the director could have been expected to prevent the losses by attending to his duties as a director.

A director is not liable for losses occasioned by the misconduct of co-directors when he is without fault.

Directors can be held liable for losses due to dishonesty of officers or employees if they as directors failed to exercise reasonable care in the selection of the employees or retained dishonest employees, after their dishonesty was known. It is the responsibility of a director, when present at a meeting at which time action is taken which he thinks is questionable, to vote against this action and ask to have his vote recorded in the minutes. He may also file a written dissent with the secretary either during the meeting or within a reasonable time after the meeting adjourns. The statute in section 1729.17 provides that in such cases, when a demand of 1/3 of the entire Board of Directors of an association made and recorded immediately at the same meeting at which the original motion was passed, any matter of policy that has been approved or passed upon by the Board must be referred to the entire membership of the cooperative association for a decision at the associations next special or regular meeting and a special meeting may be called for this purpose.

A review of directors responsibilities:

1. Directors cannot abdicate their responsibility to direct.
2. Directors are required to manage the business within the boundaries established by the statute under which the corporation is incorporated, its Charter, Articles of Incorporation and By-laws.
3. Directors are responsible for securing capable, hired management and providing this hired management with long-range objectives and policies to guide them in their decision making and to delegate to hired management, authority to perform the tasks for which they have been given the responsibility.
4. Directors are required to have knowledge of the corporations affairs sufficient to enable them to perform their duties effectively.
5. Directors are required to act in good faith and with reasonable care and prudence in handling the affairs of the business.
6. Directors are considered involved as representing a trusteeship to the stockholders or members.
7. Directors must attend board meetings on a regular basis.
8. Directors may be held financially liable for losses incurred by the corporation and in turn, the membership of the corporation under specific circumstances such as gross negligence or woeful neglect of responsibilities.

Kenneth Probasco presented a most important idea about director responsibility in his 1972 annual Landmark meeting message: "One thing I am somewhat concerned about is the future financing of Landmark and all other farmer cooperatives. Are young farmers willing to invest more in their cooperatives and permit their cooperatives to retain a greater portion of earnings as capital? The answer to this question may have a lot to do with the future of our Landmark cooperatives.

At our annual management conference in January I discussed this subject with our management people. I told them that I had been directly or indirectly involved with financing of cooperatives for some 35 years. In those early days I knew for sure how to finance cooperatives, ten years ago I was fairly sure, and now today I'm not sure at all.

Several things have been happening these past 35 years that have had drastic effects on financing.

First cooperatives have moved from simple services, such as just selling fertilizer or buying grain, requiring small amounts of capital,

to further processing, such as fertilizer manufacturing and grain storage, requiring great amounts of capital.

Second, farmers themselves have found their capital requirements greatly increased due to increased size of farms and greater mechanization, which means less instead of more capital available for their cooperatives.

Third, we have a new generation of young farmers who have a completely different attitude toward cooperatives. Too often they do not look at cooperatives as "their's", or as an integral part of the farm "outside their fence lines", but instead as "just another place of business". They do not know what it was like before farmers had cooperatives to serve at least as "price controllers".

With this kind of thinking, the young farmer of 1972, with exceptions, tends to say "why should I furnish any capital to a cooperative - let them get capital like any other business".

Some cooperative leaders are beginning to say somewhat the same thing. But to go the whole way really means giving up the whole idea of the cooperative way of doing business, which I'm not yet ready to buy as being good for farmers.

Now let's take a look at how cooperatives are meeting their financial requirements today and how they might meet them in the future.

There are three basic ways for any business to get capital - namely, borrow it, sell it, or earn it.

Cooperatives, like any other business, can borrow money for capital. The modern trend is to use this source to a greater degree than in earlier years, because interest is tax-deductible. The two major sources of borrowed capital for cooperatives are the banks for cooperatives and the sale of debentures to members or the general public.

Again, cooperatives, like any other business, can obtain capital by the sale of stock, but here there are some real differences. The stocks cooperatives sell, regardless of what names they are called, are more in the nature of preferred stocks, usually with a fixed par value and a fixed return, as contrasted to the ordinary common stocks of most corporations which have a fluctuating dividend return and have the possibility of gaining in value based on current profits and/or possible future profits.

One great disadvantage in this source of capital is the high tax cost of paying dividends. Interest of 7% on a debenture costs the cooperative or the ordinary non-cooperative corporation just exactly 7% since the interest is deductible as a cost of doing business.

To pay a similar 7% dividend on capital stock costs most regional cooperatives and non-cooperative corporations about 14%, because the dividend is not tax-deductible. In other words, out of \$14 net profit, taxes take about \$7, which leaves \$7 for dividends.

A non-cooperative corporation can usually pay a lower rate of dividend than the cooperative corporation, because the investor in the non-cooperative corporation expects a part of his return to come in the form

of capital gains through the potential increased value of the stock. In the cooperative stock, the investor does not have the chance for capital gain, and, therefore, wants a higher dividend rate because that is all he is going to get.

Now let's talk a little about the third method of raising capital - to earn it. On the surface this would be an ideal way, except for the little subject of taxes.

Of course, any corporation can earn \$100 and keep \$50 as capital at a cost of 50% or \$50. Thus to get capital this way costs 10% per year for five years and free thereafter, or 50% the first year and free thereafter, or 5% for ten years and free thereafter, etc.

This system of capital acquisition is available to both the cooperative and non-cooperative corporation provided competition will let you acquire capital after taxes to any great extent within the competitive price structure.

In reality there is no such thing as "free capital". All capital belongs to somebody and should earn a return whether or not that return is paid to the owner as a return on money used or paid to the customer as a patronage refund on business done.

In the final analysis, there are pros and cons on all of the various ways of obtaining capital - borrow it, sell it, or earn it. There are limitations - costs and credit availability - to the various methods.

The cooperatives of the seventies will undoubtedly have to use all three methods of acquiring capital, in balance with each other.

A fundamental principle for the farmer of the future to remember is that if he is going to control his cooperative he must put a reasonable amount of capital into it. Likewise, he must insist that his cooperative operate on a patronage refund system paying out or allocating at least some of its profits on a business-done (patronage refund) basis, versus a capital ownership basis or his cooperative will cease to work for him as a farmer (furnishing his inputs and marketing his outputs) and instead will work exclusively for those who furnish the capital...."

Coops Are Unique

Cooperative directors are amateurs. Amateur directors competing in a dynamic competitive business world with professional directors. You are not major stockholders of your cooperative and most of you have a job in addition to being director of your Landmark. We assume all of you are in farming operations that require your primary consideration. I also assume that most of you do not have an attorney, an accountant, an economist, or other professional consultant working for you who can collect facts and data to assist you in making decisions at your board meetings. Coop directors must be a member of the coop with no requirement as to financial investment. Directors of general businesses are usually directors because of

their dollar investment in the firm or the number of shares of stock they can control. Many of these directors occupation is directing and they can afford to employ advisors to assist them in managing and safeguarding their personal financial investment.

Directors of some cooperatives are striving so hard to become "just like all other types of businesses" that they fail to recognize the unique characteristics of a cooperative business organization, and basic principles that distinguish the coop from other types of business associations. As a result of this future they lose the advantages of the unique resource inherent in their cooperative. People are a unique resource of a cooperative.

You are today, much as the founders of your cooperative were thirty five years ago, in a leadership position with the responsibility for charting a course of action for your coop in an unexplored and uncharted sea of competitive business.

There is no cooperative director of the past who had problems of the same magnitude or any more challenging than the ones that you face today. In view of these challenges, we must put the cooperative directors role; what it is, what it is all about; in proper perspective. There are two vast areas of knowledge a cooperative director must master. (1) The unique nature of the cooperative. (2) The business climate in which the cooperative operates.

As coop directors you must keep in mind that some of your members or stockholders are "with you all the way-win or tie" - but when you lose a round they may be quick to say, "You should have known better" You will have plenty of support when your position is popular and you must have the courage to stand alone when your cause is right but unpopular. It takes more than courage, however, to be a director. It takes vision and knowledge. To obtain the necessary vision and knowledge, directors must devote the necessary time from their schedule to participate in meetings like this. You must set aside time to adequately collect facts, study the facts and make decisions for the coop. In our dynamic economy, there may not be sufficient time to sufficiently ponder the question or consult members, but if you are already involved with members you will know their concerns.

The acceptance of an obligation by an individual to perform work or carry out assignments creates his responsibilities. Therefore, when the member of the cooperative who has been elected a director accepts the position he implies that he recognized the responsibility of the position and pledges that he will discharge these responsibilities to the best of his ability.

Yes, I said coop directors are amateurs competing with professionals. But, I did not say you could not play a good game. You can compete if you prepare and train -- this you are doing -- you must now use what you have learned. Luck can be a factor in the outcome of your encounter with the professional directors. Luck is the end result of when opportunity and preparedness come together. Cooperatives do have some valuable

uniqueness. One is its human resources But like any resource it must be effectively handled or it can be a detriment as well as a force for positive action.

Your coop's future is in your hands.

THE OHIO COUNCIL OF FARMER COOPERATIVES

by

George Robey, President
Ohio Council of Farmer Cooperatives

The Ohio Council of Farmer Cooperatives is composed of representatives of 17 Ohio Cooperative organizations. The objective of the Ohio Council of Farmer Cooperatives is: "To plan, coordinate, sponsor, and conduct educational programs for: Youth, Young Farmers, members of the cooperatives, Managers and employees of cooperatives, Extension Agents, Vocational Education Teachers and other educational interests about cooperatives and their role in our dynamic, competitive economy.

The Ohio Council of Farmer Cooperatives has contracted with the College of Agriculture, The Ohio State University, to assist the OCFC with its educational program and to enhance the capability of the Ohio State University to discharge its obligations in working with cooperatives as a part of its total responsibilities in Agricultural Business Management. One staff member in the Department of Agricultural Economics will devote approximately 50 percent of his time as a consultant on and coordinator of Educational programs.

Coop leaders in each county are encouraged to organize a coop council and to elect one of their members a County Coop Chairman. The County Coop Chairman provides the leadership for cooperative educational programs in his county. The Extension Area Centers are the basis for dividing the state into work areas. County Coop Chairmen within each of the ten Extension Areas (see the map) elect an Area Coop Chairman who works closely with the Consultant-Coodinator and the Education and Youth Committees of the OCFC.

Members of the Ohio Council of Farmer Cooperatives are:

- Central Ohio Breeding Association
- Columbus Fruit & Vegetable Cooperative
- Farm Insurance Mutuals of Ohio
- Landmark, Inc.
- Louisville Bank for Cooperatives
- Nationwide Insurance Company
- Northern Ohio Breeding Association
- Ohio Agricultural Marketing Association
- Ohio Farmers
- Ohio Federation of Federal Land Bank Association
- Ohio Federation of Production Credit Association
- Ohio Milk Producers Federation
- Ohio Rural Electric Cooperatives, Inc.
- Ohio State Grange
- Ohio Wool Growers Cooperative Association
- Producers Livestock Association

The OCFC is a member of the American Institute of Cooperation, The National Council of Farmer Cooperatives and The Association of State Secretaries of Farmer Cooperatives.

COUNTY OR LOCAL COOP CHAIRMEN
by
D. L. Bourgeois, Vice President

County or Local (as they can be made up of more than one county) Coop Councils are the foundation upon which the Ohio Council of Farmer Cooperatives is built. It is recommended that local representatives of O. C. F. C. members meet at a local level periodically. Some county councils are made up of local managers, field representatives or agents of O. C. F. C. members. Some county councils also include representatives of boards of directors. For the organization of a new county coop council it is suggested that the managers, field representatives or agents of O. C. F. C. be called together by the County Chairman and the County Extension Agent.

It is suggested that a Chairman be elected and his name, address and phone number be sent to the consultant coordinator in November each year

1. The Chairmen are liaison between the O. C. F. C. and the County or local Councils, Grassroots Coops and their people.
2. A must for a local chairman is to set up meetings monthly, quarterly, or at least semiannually and get the local people together for these meetings, remembering that all locals could be contacted for helping out at these meetings as most of them are affiliate members through their State or regional coops.
3. The local chairman must remember that he can call in University employees other than Chuck Ingraham and County and Area extension people when needed.
4. The Chairman should see that the Local Council receives information about and sponsor suggested education programs proposed by the O. C. F. C. and to help coordinate cooperative educational efforts of Cooperatives in the county or local area.

5. Special projects of a public relations form can also be promoted at the local level by the Chairman and local council.
6. The chairman should remind the Local Council members, there are no dues required for O. C. F. C. from the local council level and that local educational programs are expected to be self supporting.
7. The local council Chairman is responsible for keeping the Council in operation. In doing this, the main thing is meeting at least twice a year. One or more of these meetings could be learning about each others coop - resulting in promoting each others coop.

A detailed map of Ohio, showing its 88 counties. The map is oriented with North at the top. Major cities are marked with black dots and labeled: CLEVELAND (in Cuyahoga County), COLUMBUS (in Franklin County), CANTON (in Stark County), TOLEDO (in Lucas County), AKRON (in Summit County), DAYTON (in Montgomery County), WASHINGTON (in Franklin County), JACKSON (in Harrison County), and McCONNELSVILLE (in Hamilton County). The map also shows the names of all 88 counties, such as Cuyahoga, Franklin, Hamilton, Adams, and others. The map is a black and white line drawing with county boundaries clearly marked.

EXTENSION AREAS